

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE THE PETITION OF	§
LAURENCE AND NANCY	§ No. 16, 2006
MILLER FOR A WRIT OF	§
MANDAMUS	§
	§

Submitted: January 24, 2006  
Decided: February 28, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 28<sup>th</sup> day of February 2006, it appears to the Court that:

(1) The petitioners, Laurence and Nancy Miller, seek to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Court of Common Pleas to re-issue its decision following trial in the case of *Miller v. Brookside Community, Inc.*, C.A. No. 2003-12-004 so that they might file a timely appeal from that decision in the Superior Court. The State of Delaware, as the real party in interest, has filed an answer requesting that the petition be dismissed. We find that the petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

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<sup>1</sup> DEL. CONST. art IV, § 11(6); SUPR. CT. R. 43.

(2) The record reflects that Brookside successfully sued the Millers in the Justice of the Peace Court for \$195.00 in unpaid maintenance charges and late fees, plus interest. Following an appeal by the Millers, a trial *de novo* took place in the Court of Common Pleas on June 14, 2004, with the same result. The Court of Common Pleas' order finding in favor of Brookside was docketed on June 15, 2004. While the decision bears the Millers' correct mailing address, the Millers claim that the Court of Common Pleas failed to send them the decision and, furthermore, that they only learned about the decision by chance approximately eight months after it was issued. The Millers filed a motion to re-open the decision in February 2005, which the Court of Common Pleas denied by letter dated June 21, 2005.

(3) On July 22, 2005, the Millers filed a petition for a writ of mandamus in the Superior Court requesting that the Court of Common Pleas be directed to re-issue its June 15, 2004 decision. By order dated October 20, 2005, the Superior Court denied the petition on the ground that the Millers had failed to avail themselves of an adequate remedy at law—namely, a timely appeal from the Court of Common Pleas' denial of their

motion to re-open. On November 2, 2005, the Superior Court denied the Millers' motion for reargument.<sup>2</sup>

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a lower court to perform a duty.<sup>3</sup> As a condition precedent to the issuance of the writ, a petitioner must demonstrate that: (i) he has a clear right to the performance of the duty; (ii) no other adequate remedy is available; and (iii) the trial court has arbitrarily failed or refused to perform its duty.<sup>4</sup> Moreover, mandamus may not be used as a substitute for appellate review.<sup>5</sup>

(5) There is no basis for the issuance of a writ of mandamus in this case. The petitioners have failed to demonstrate a clear right to the performance of a duty and an arbitrary failure or refusal to perform that duty on the part of the trial court. They also have failed to demonstrate that a timely appeal from the Superior Court's decision dismissing their petition for a writ of mandamus did not provide them with an adequate remedy. The petitioners may not use mandamus as a substitute for a timely-filed appeal. Their petition must, therefore, be dismissed.

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<sup>2</sup> A second motion for reargument filed by the Millers was stricken by the Superior Court.

<sup>3</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>4</sup> *Id.*

<sup>5</sup> *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice